

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

<p>Kenneth Gene Lyons III,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>Steve Hammer, Warden; Stillwater Correctional Facility Staff; Atlantis Treatment Staff; Marina Fuhrman, Director; Mark McShane, Therapist; and Tom Morrison, Therapist,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No. 15-cv-4346 (JNE/HB)</p> <p style="text-align: center;">REPORT AND RECOMMENDATION</p>
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Plaintiff Kenneth Gene Lyons III commenced this action by filing a complaint seeking relief under 42 U.S.C. § 1983. Lyons did not pay the required filing fee for this case, but instead filed an application seeking leave to proceed *in forma pauperis* (“IFP”) [Doc. No. 2]. In an Order dated January 5, 2016, this Court required Lyons to pay an initial partial filing fee of \$23.12. (Order at 3 [Doc. No. 3].) Lyons was given twenty days from the date of the Order, failing which it would be recommended that this action be dismissed without prejudice for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

That deadline has now passed, and Lyons has not paid the required filing fee. In fact, Lyons has not communicated with the Court about this case at all since commencing this action. Accordingly, this Court now recommends, in accordance with its prior order,

that this action be dismissed without prejudice under Rule 41(b) for failure to prosecute. *See Henderson v. Renaissance Grand Hotel*, 267 F. App'x 496, 497 (8th Cir. 2008) (per curiam) (“A district court has discretion to dismiss an action under Rule 41(b) for a plaintiff’s failure to prosecute, or to comply with the Federal Rules of Civil Procedure or any court order.”).

Accordingly, based upon the foregoing, and on all of the files, records, and proceedings herein, **IT IS HEREBY RECOMMENDED** that this action be **DISMISSED WITHOUT PREJUDICE** under Federal Rule of Civil Procedure 41(b) for failure to prosecute.

Dated: February 26, 2016

s/ Hildy Bowbeer
HILDY BOWBEER
United States Magistrate Judge

NOTICE

Filing Objections: This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), “a party may file and serve specific written objections to a magistrate judge’s proposed finding and recommendations within 14 days after being served a copy” of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. LR 72.2(b)(2). All objections and responses must comply with the word or line limits set for in LR 72.2(c).

Under Advisement Date: This Report and Recommendation will be considered under advisement 14 days from the date of its filing. If timely objections are filed, this Report and Recommendation will be considered under advisement from the earlier of: (1) 14 days after the objections are filed; or (2) from the date a timely response is filed.